



Reprinted
February 3, 2015

SENATE BILL No. 55

DIGEST OF SB 55 (Updated February 2, 2015 3:54 pm - DI 106)

Citations Affected: IC 27-1; IC 34-18.

Synopsis: Medical malpractice actions. Defines "direct file threshold amount" as an amount equal to: (1) before July 1, 2020, \$45,000; and (2) after June 30, 2020, an adjusted amount calculated by applying the average of the consumer price index and the medical care component of the consumer price index to the \$45,000 base amount. Requires the department of insurance to calculate the direct file threshold amount on July 1, 2020 and every five years thereafter, and to publish the direct file threshold amount in the Indiana Register. Permits a patient to bring an action against a health care provider without submitting the complaint to the medical review board if: (1) the amount of the claim is not more than the direct file threshold amount; (2) the cause of action is based on the removal of the wrong body part; or (3) the patient's cause of action is based on the existence of a foreign object in the patient's body.

Effective: July 1, 2015.

**Steele, Young R Michael, Randolph,
Broden**

January 6, 2015, read first time and referred to Committee on Judiciary.
January 22, 2015, amended, reported favorably — Do Pass.
February 2, 2015, read second time, amended, ordered engrossed.

SB 55—LS 6266/DI 106



Reprinted
February 3, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 55

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-1-3-32 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]: **Sec. 32. (a) The department shall calculate the direct file**
4 **threshold amount, as described in IC 34-18-8-0.5 (medical**
5 **malpractice).**
6 **(b) The department shall publish in the Indiana Register the**
7 **direct file threshold amount determined under IC 34-18-8-0.5.**
8 SECTION 2. IC 34-18-8-0.5. IS ADDED TO THE INDIANA
9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2015]: **Sec. 0.5. (a) The direct file threshold**
11 **amount used for purposes of section 6(a), 6(b), and 6(c) of this**
12 **chapter is equal to the following.**
13 **(1) Before July 1, 2020, forty-five thousand dollars (\$45,000).**
14 **(2) After June 30, 2020, the amount determined by the**
15 **department of insurance under subsection (b).**
16 **(b) On July 1, 2020, and on July 1 of every fifth year thereafter,**

SB 55—LS 6266/DI 106



the department of insurance shall determine a new threshold amount to be used for purposes of section 6(a), 6(b), and 6(c) of this chapter. The new threshold amount is equal to the amount determined in the following STEPS:

STEP ONE: Determine the result of:

(A) the Consumer Price Index for All Urban Consumers (CPI-U) determined by the Bureau of Labor Statistics of the United States Department of Labor, as of December 31 of the most recently completed calendar year; divided by

(B) the Consumer Price Index for All Urban Consumers (CPI-U) determined by the Bureau of Labor Statistics of the United States Department of Labor, as of:

(i) December 31, 2014, in the case of the determination of a new threshold amount made for July 1, 2020; or

(ii) December 31 of the year preceding the year in which a new threshold amount was last determined under this section, in the case of the determination of a new threshold amount made for July 1, 2025, or thereafter.

STEP TWO: Determine the result of:

(A) the index of the Medical Care component of the Consumer Price Index for All Urban Consumers (CPI-U) determined by the Bureau of Labor Statistics of the United States Department of Labor, as of December 31 of the most recently completed calendar year; divided by

(B) the index of the Medical Care component of the Consumer Price Index for All Urban Consumers (CPI-U) determined by the Bureau of Labor Statistics of the United States Department of Labor, as of:

(i) December 31, 2014, in the case of the determination of a new threshold amount made for July 1, 2020; or

(ii) December 31 of the year preceding the year in which a new threshold amount was last determined under this section, in the case of the determination of a new threshold amount made for July 1, 2025, or thereafter.

STEP THREE: Determine the result of:

(A) the sum of the STEP ONE and STEP TWO results; divided by

(B) two (2).

STEP FOUR: Multiply the STEP THREE result by the current threshold amount.

SECTION 3. IC 34-18-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) Notwithstanding



section 4 of this chapter, a patient may commence an action against a health care provider for malpractice without submitting a proposed complaint to a medical review panel if the patient's pleadings include a declaration that:

(1) the patient seeks damages from the health care provider in an amount not greater than ~~fifteen thousand dollars (\$15,000)~~ **the direct file threshold amount described in section 0.5 of this chapter;**

(2) the patient's cause of action is based on the removal of the wrong body part; or

(3) the patient's cause of action is based on the existence of a foreign object in the patient's body that has no therapeutic or diagnostic purpose.

In an action commenced under this subsection (or IC 27-12-8-6(a) before its repeal), the patient is barred from recovering any amount greater than ~~fifteen thousand dollars (\$15,000)~~ **the direct file threshold amount, except as provided in subsection (b): except for causes of action based on a declaration described in subdivision (2) or subdivision (3) or except as provided in subsection (b).**

(b) A patient who:

(1) commences an action under ~~subsection (a)~~ **subsection (a)(1)** (or IC 27-12-8-6(a) before its repeal) in the reasonable belief that damages in an amount not greater than ~~fifteen thousand dollars (\$15,000)~~ **the direct file threshold amount** are adequate compensation for the bodily injury allegedly caused by the health care provider's malpractice; and

(2) later learns, during the pendency of the action, that the bodily injury is more serious than previously believed and that ~~fifteen thousand dollars (\$15,000)~~ **the direct file threshold amount** is insufficient compensation for the bodily injury;

may move that the action be dismissed without prejudice and, upon dismissal of the action, may file a proposed complaint subject to section 4 of this chapter based upon the same allegations of malpractice as were asserted in the action dismissed under this subsection. In a second action commenced in court following the medical review panel's proceeding on the proposed complaint, the patient may recover an amount greater than ~~fifteen thousand dollars (\$15,000)~~ **the direct file threshold amount.** However, a patient may move for dismissal without prejudice and, if dismissal without prejudice is granted, may commence a second action under this subsection only if the patient's motion for dismissal is filed within two (2) years after commencement of the original action under subsection ~~(a)~~ **(a)(1)** (or IC 27-12-8-6(a)



1 before its repeal).
2 (c) If a patient:
3 (1) commences an action under ~~subsection (a)~~ **subsection (a)(1)**
4 (or IC 27-12-8-6(a) before its repeal);
5 (2) moves under subsection (b) (or IC 27-12-8-6(b) before its
6 repeal) for dismissal of that action;
7 (3) files a proposed complaint subject to section 4 of this chapter
8 based upon the same allegations of malpractice as were asserted
9 in the action dismissed under subsection (b) (or IC 27-12-8-6(b)
10 before its repeal); and
11 (4) commences a second action in court following the medical
12 review panel proceeding on the proposed complaint;
13 the timeliness of the second action is governed by IC 34-18-7-1(c).
14 (d) A medical liability insurer of a health care provider against
15 whom an action has been filed under subsection (a) (or IC 27-12-8-6(a)
16 before its repeal) shall provide written notice to the state health
17 commissioner as required under IC 34-18-9-2.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 55, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 8, delete "one hundred eighty-seven thousand dollars (\$187,000)." and insert "**fifty thousand dollars (\$50,000).**".

Page 1, line 11, delete "one hundred eighty-seven" and insert "**fifty thousand dollars (\$50,000).**".

Page 1, line 12, delete "thousand dollars (\$187,000).".

Page 1, line 16, delete "one" and insert "**fifty thousand dollars (\$50,000).**".

Page 2, line 1, delete "hundred eighty-seven thousand dollars (\$187,000)".

Page 2, line 6, delete "one hundred eighty-seven thousand" and insert "**fifty thousand dollars (\$50,000).**".

Page 2, line 7, delete "dollars (\$187,000)".

Page 2, line 15, delete "one hundred" and insert "**fifty thousand dollars (\$50,000).**".

Page 2, line 16, delete "eighty-seven thousand dollars (\$187,000)".

and when so amended that said bill do pass.

(Reference is to SB 55 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 1.

 SENATE MOTION

Madam President: I move that Senate Bill 55 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-1-3-32 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2015]: **Sec. 32. (a) The department shall calculate the direct file threshold amount, as described in IC 34-18-8-0.5 (medical malpractice).**

(b) The department shall publish in the Indiana Register the direct file threshold amount determined under IC 34-18-8-0.5.

SB 55—LS 6266/DI 106



SECTION 2. IC 34-18-8-0.5. IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 0.5. (a) The direct file threshold amount used for purposes of section 6(a), 6(b), and 6(c) of this chapter is equal to the following.**

(1) Before July 1, 2020, forty-five thousand dollars (\$45,000).

(2) After June 30, 2020, the amount determined by the department of insurance under subsection (b).

(b) On July 1, 2020, and on July 1 of every fifth year thereafter, the department of insurance shall determine a new threshold amount to be used for purposes of section 6(a), 6(b), and 6(c) of this chapter. The new threshold amount is equal to the amount determined in the following STEPS:

STEP ONE: Determine the result of:

(A) the Consumer Price Index for All Urban Consumers (CPI-U) determined by the Bureau of Labor Statistics of the United States Department of Labor, as of December 31 of the most recently completed calendar year; divided by

(B) the Consumer Price Index for All Urban Consumers (CPI-U) determined by the Bureau of Labor Statistics of the United States Department of Labor, as of:

(i) December 31, 2014, in the case of the determination of a new threshold amount made for July 1, 2020; or

(ii) December 31 of the year preceding the year in which a new threshold amount was last determined under this section, in the case of the determination of a new threshold amount made for July 1, 2025, or thereafter.

STEP TWO: Determine the result of:

(A) the index of the Medical Care component of the Consumer Price Index for All Urban Consumers (CPI-U) determined by the Bureau of Labor Statistics of the United States Department of Labor, as of December 31 of the most recently completed calendar year; divided by

(B) the index of the Medical Care component of the Consumer Price Index for All Urban Consumers (CPI-U) determined by the Bureau of Labor Statistics of the United States Department of Labor, as of:

(i) December 31, 2014, in the case of the determination of a new threshold amount made for July 1, 2020; or

(ii) December 31 of the year preceding the year in which a new threshold amount was last determined under this section, in the case of the determination of a new threshold



amount made for July 1, 2025, or thereafter.

STEP THREE: Determine the result of:

(A) the sum of the STEP ONE and STEP TWO results; divided by

(B) two (2).

STEP FOUR: Multiply the STEP THREE result by the current threshold amount."

Page 1, line 6, after "that" insert ":

(1)".

Page 1, line 8, delete "fifty thousand dollars (\$50,000)." and insert **"the direct file threshold amount described in section 0.5 of this chapter;**

(2) the patient's cause of action is based on the removal of the wrong body part; or

(3) the patient's cause of action is based on the existence of a foreign object in the patient's body that has no therapeutic or diagnostic purpose."

Page 1, line 8, beginning with "In" begin a new line blocked left.

Page 1, line 11, delete "fifty thousand dollars (\$50,000)," and insert **"the direct file threshold amount,"**

Page 1, line 11, strike "except as provided".

Page 1, line 12, strike "in subsection (b)." and insert **"except for causes of action based on a declaration described in subdivision (2) or subdivision (3) or except as provided in subsection (b)."**

Page 1, line 14, strike "subsection (a)" and insert **"subsection (a)(1)".**

Page 1, line 16, delete "fifty" and insert **"the direct file threshold amount"**.

Page 2, line 1, delete "thousand dollars (\$50,000)".

Page 2, line 6, delete "fifty thousand dollars (\$50,000)" and insert **"the direct file threshold amount"**.

Page 2, line 14, delete "fifty" and insert **"the direct file threshold amount."**

Page 2, line 15, delete "thousand dollars (\$50,000)."

Page 2, line 19, strike "(a)" and insert **"(a)(1)".**

Page 2, line 22, strike "subsection (a)" and insert **"subsection (a)(1)".**

Renumber all SECTIONS consecutively.

(Reference is to SB 55 as printed January 23, 2015.)

STEELE

